

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	No. 05-CV-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**MOTION IN LIMINE TO EXCLUDE TESTIMONY OF DEFENDANTS' EXPERT
WITNESSES DRS. SULLIVAN, MYODA, AND SAMADPOUR**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), and respectfully requests that this Court issue an order excluding the testimony of Defendants' experts Drs. Sullivan, Myoda, and Samadpour because their affidavits were produced to the State well after the Court's February 8, 2008 deadline.

1. District courts have the inherent power to enforce their own orders. *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980). This includes, of course, the ability to exclude untimely expert opinions. *O2 Micro Intern. Ltd. v. Monolithic Power Systems, Inc.*, 467 F.3d 1355, 1368-69 (Fed. Cir. 2006).

2. This Court ordered Defendants to produce all of their experts' opinions by Friday, February 8, 2008. (DKT # 1502, pg. 2, "the Court finds Defendants shall produce, by February 8, 2008, all expert opinions...")

3. On February 8, Defendants attempted to produce their expert materials to the State by sending separate emails from Defense Counsel John Elrod to State's Counsel Rick

Garren. This information included expert affidavits, CVs, and lists of publications, among other expert materials. Mr. Garren received affidavits from fifteen experts. Defense counsel did not produce hard copies of these affidavits to the State or produce to the State CDs containing the expert materials in electronic format. Neither Mr. Elrod nor any other counsel representing any Defendant called Mr. Garren to confirm that he had received all of the affidavits that Defendants intended Mr. Garren to receive. Nor did they send a complete list of the experts so that the State could inventory Defendants' disclosures to ensure it had a complete set.

4. On February 12 -- four days after the Court-imposed deadline -- at approximately 6 p.m., Defense counsel emailed the State affidavits for three additional experts, Drs. Sullivan, Myoda, and Samadpour, none of which were included in the February 8 expert disclosure.

5. Defendants' counsel claimed that these expert affidavits were produced on Friday, February 8, but they were not. The plain fact is that the State did not receive these expert affidavits until four days after the Court's deadline, thereby prejudicing the State in its preparations for the preliminary injunction hearing.

6. Defense Counsel's method of production was entirely irresponsible. These expert materials form the basis of Defendants' defense in this motion. But instead of actually ensuring that the State received the relevant information, Defense counsel simply emailed the materials to one of the State's attorneys (instead of emailing the material to all of the State's attorneys, as they have done in the past). Defense counsel never checked to ensure that State's counsel received all of Defendants expert materials, despite apparently being aware that one or more of their earlier e-mails of expert materials to defense counsel had encountered transmission problems. If they would have checked, they would have discovered that Mr. Garren never received information concerning three experts -- Drs. Sullivan, Myoda, and Samadpour

7. Because these three expert affidavits were not produced to the State by the Court-imposed deadline, the Court should enforce its order and exclude the testimony of these three experts.

WHEREFORE, for these reasons, therefore, the testimony of Drs. Sullivan, Myoda, and Samadpour should be excluded.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2008, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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